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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

VICKI J. AZNARAN and
RICHARD N. AZNARAN,

Plaintiffs,

vs.

CHURCH OF SCIENTOLOGY OF
CALIFORNIA, et al.,

Defendants.

AND RELATED COUNTERCLAIMS.

CASE No. CV 88-1786 JMI(Ex)

REPLY IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT BASED ON THE STATUTE OF LIMITATIONS

DATE: September 9, 1991
TIME: 10:00 a.m.
COURTROOM: Hon. James M. Ideman

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5 Cal. Code Civ. Proc. section 361,
6 California Code of Civil Procedure. section. 361. .. . 19

7 12 Cal.Jur.3d, Conflict of Laws section 101, at 604
8 (1974) (emphasis added) 18

9 Cal.Jur.3d, Civil Conspiracy section 4 at 179 (1974) ("Since there is no cause of action for conspiracy in
10 and of itself, the statute of limitations is determined by the nature of the action in which the conspiracy is
11 alleged or appears.") 24

12 Cal.Jur.3d, Conflicts of Law section 103 at 606-07 (exception to section 361 applies only when plaintiff
13 "has held the cause, as a California citizen, from the meiit accrued") (emphasis added) 19

14

15 Civ. No. 88-1033, 1988 U.S. Dist. Lexis 11742 (D.N.J. Oct. 28, 1988) (holding that a separate factual statement
16 similar to a factual summary in a brief fails to meet the requirement of a concise separate statement of fact) 8

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3 B. Witkin, California Procedure, section 71, at 99 (3d ed. 1985) 19

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PRELIMINARY STATEMENT

It is time for the Court to put an end to the expensive, time-consuming force that this case is.

Defendants have filed a motion for summary judgment which sets forth ample evidence that everyone of plaintiffs Vicki and Richard Aznaran's alleged claims for relief is barred by the applicable statute of limitations. In response, the Aznarans concede that Vicki's false imprisonment claim is time-barred because she left the condition claimed to have been the wrongful confinement on March 31, 1987, more than one year before this suit was filed. [Plaintiffs' Opposition at 16 (hereinafter "Pl. Opp."); see Defendants' Memorandum at 9-13 (hereinafter "Def. Mem."); Defendants' Uncontroverted Fact No. 4]. The Aznarans do not even attempt to controvert the undisputed facts that demonstrate that the events that give rise to their other claims occurred well outside the limitations period [Def. Mem. at 16-19 and Uncontroverted Facts Nos. 5-7 (intentional and negligent infliction of emotional distress); Def. Mem. at 21-24 and Uncontroverted Facts Nos 7-9 (loss of consortium); Def. Mem at 27-35 and Uncontroverted Facts Nos. 10, 12-17 (fraud); Def. Mem. at 37-38 and Uncontroverted Fact No. 6 (constructive fraud); Def. Mem. at 44-46 and Uncontroverted Fact No. 10 (breach of contract); Def. Mem. at 44-46 and Uncontroverted Facts Nos. 10, 22 (restitution); Def. Mem. at 46-49 and Uncontroverted Fact No. 23 (invasion of privacy); Def. Mem. at 49-50 and Uncontroverted Fact No. 24 (statutory minimum wage claim).]

With all of that established and uncontroverted, summary

judgment on all of the Aznarans' claims is mandated, and this 3 1/2 year drain on everyone's resources will reach its proper conclusion: judgment for all defendants on all counts.

Confronted with that insurmountable hurdle, the Aznarans, their present counsel, and Joseph A. Yanny, defendants' former counsel and the Aznarans' de facto counsel, responded predictably. They once again change and contradict their earlier sworn testimony to "support" never-before alleged legal theories conjured up to meet the exigencies of the moment.

On February 20, 1991, defendants filed a motion asking the Court to order the Aznarans and their counsel not to indulge further in their habitual changing of their sworn versions of the facts and the legal theories of their case. That motion was necessitated by the Aznarans continuously supplying declarations that were at odds with their earlier sworn testimony and because their counsel changed their legal theories each time he was called upon to articulate them, to the point that even their legal theories were in conflict. That motion remains under submission. Now, faced with meritorious motions for summary judgment, the Aznarans have once again changed the facts, contradicted their earlier testimony, created an entirely new story concerning their case and again redefined their theories.

The Aznarans' and their counsel's repositioning of the facts and the legal theories they espouse is hardly surprising for two reasons. First, as set forth in defendants' February 20, 1991 motion papers on this point, they have done so throughout this entire litigation. Second, and even more telling, the utter disregard of the truth that the Aznarans have made the trademark

of their litigation effort, bears the unmistakable signature of Gerald Armstrong, whose theory of litigating against Churches of Scientology, as captured on videotape in 1984, is not to worry about what the facts really are, but instead to choose a state of "facts" that should survive a challenge by the Church and "just allege it." [Declaration of Earle C. Cooley, Ex. F].

It is clear that Armstrong's influence and philosophy permeates the Aznarans' oppositions. Armstrong was in the office of the Aznarans' counsel, Ford Greene, for most of the week in which the Aznarans' opposition were created. [Ex. E, Declaration of Sam Brown, ¶ 3]. On August 19, 1991, Armstrong admitted to one of defendants' counsel that he was at Greene's office "helping out." [Ex. B, Declaration of Laurie J. Bartilson.] Even more disturbingly to a Court that disqualified Barry Van Sickle as counsel for the Aznarans because his presence represented an improper "extension of Yanny" into these proceedings and disqualified Yanny himself because his presence was "highly prejudicial" to defendants, Armstrong is a paralegal who was hired by Yanny to work on the Aznaran case [Transcript of Proceedings, August 6, 1991, at 25, Ex. 1 to Ex. B, Declaration of Laurie Bartilson] and thus had no business being anywhere near the opposition because: (1) Yanny was disqualified from representing the Aznarans here; and (2) Yanny has been preliminarily enjoined from directly or indirectly representing the Aznarans [Reporter's Transcript of August 6, 1991, at 34].

In essence, the facts demonstrate and the Aznarans admit that they long knew of their purported injuries, but that the limitations period did not begin to run until they had come to

the conclusion that the injuries they had allegedly suffered were the result of "brainwashing." Their opposition is the time to take that "brainwashing" theory -- the brainchild of an "expert" who has been found by federal courts from coast to coast to be unqualified to testify regarding that discredited theory -- and "just allege it."

Plaintiffs' assertion that they were "brainwashed" and so incapable of discovering their own claims is ludicrous on its face. The Aznarans are asking this Court to believe that Vicki Aznaran, who held one of the highest positions in Scientology's ecclesiastical hierarchy, was effectively "brainwashed" by her subordinates and employees. Just as it would be an impossibility for a court to entertain an action by a former Cardinal based on a claim that he had been "brainwashed" by his priests and nuns into devoting his life to Catholicism, and so did not discover until long after renouncing his religion that he had been damaged by his religious training and experiences, so must the Aznarans' claims be barred here.

As demonstrated in the declarations of Mark C. Rathbun (Ex. A) and Jesse Prince (Ex. H), the Aznarans were quite aware of damages claims against the Church, identical to their own, 10 years ago. Vicki Aznaran acknowledges as much in the video-taped speech given in October, 1984 appended to the declaration of Mark Rathbun.

The Aznaran declarations are a fraud on the Court.

The entire thrust of the Aznarans' disingenuous and tainted opposition is an attempt to so prejudice and so inflame the Court against defendants that it will escape the Court's notice that

all the Aznarans' purported claims are incontrovertibly time-barred. They resort to unsubstantiated, scurrilous allegations, the falsity of which are exposed by the Aznarans' own deposition testimony.[1] [Ex. A, Declaration of Mark C. Rathbun and exhibits thereto]. They try to avoid the issues by lengthy and melodramatically false descriptions of the RPF, and of their stay in a Hemet, California Best Western Motel. [Id.]. Vicki Aznaran now claims she "escaped" from the RPF. Earlier, she testified in her deposition she never "escaped" from the RPF, but rather that she merely left. Vicki Aznaran cannot create an issue of fact with herself. Her current tale is a series of desperate lies to avoid the consequences of her earlier testimony as corroborated by the people who left with her and those who witnessed and participated in her voluntary departure from the Church. [Ex. G, Declaration of Lynn R. Farny; Ex. H, Declaration of Jesse Prince; Ex. I, Declaration of David Bush; Ex. A, Declaration of Mark Rathbun; Ex. C, Declaration of Lawrence E. Heller and exhibits.[2]

---

[1] The new factual assertions are made by the Aznarans in a pair of "cookie-cutter" declarations. These declarations are so nearly identical that Richard Aznaran refers to his "husband" [Dec. of Richard Aznaran, ¶ 13] and his "escape from the RPF" in 1987. [Id., ¶ 2]. These declarations, like many filed by the Aznarans, are utterly suspect in both form and content. Not only do the new declarations contain contradictory statements which bolster their new legal theories, their format also indicates that the Aznarans are simply willing to swear to anything which their attorneys manufacture for them. The signature pages affixed to both declarations are either completely devoid of text or nearly so and are distinctly different in typestyle from the remaining portions of the declarations. They are not printed on numbered paper, nor are they on Greene's printed paper. It is plain that pre-signed attestations are merely dated and slapped on to whatever version of the facts the Aznarans are espousing at any particular moment.

[2] Defendants expect that the Court is as tired as they are of the ever-changing stories of plaintiffs, and of the ever-increasing (continued...)

In the end, the Aznarans' lies are exposed by their own admissions, and their opposition stands utterly without merit. There is no dispute that the Aznarans' claims are time-barred and the only supposedly "controverted" facts are those which arise from the fact that the Aznarans' sworn statements now conflict with the Aznarans' sworn statements made earlier. Summary judgment for defendants, therefore, is compelled.

ARGUMENT

I. PLAINTIFFS' VIOLATION OF COURT ORDERS AND COURT RULES MANDATES THE GRANTING OF THIS MOTION FOR SUMMARY JUDGMENT

In its Order of August 9, 1991, this Court stated "Counsel are hereby reminded that the 35-page limit, excluding indices and exhibits, mandated by the Local Rules apply to all submissions." See Local Rule 3.10. Nevertheless, plaintiffs, in utter disregard of this Court's order, have filed an Opposition Memorandum of 37 pages and something called "Plaintiffs' Appendix of Facts in Support of Opposition to Motions For Summary Judgment" of 53 pages. Plaintiffs have incorporated by reference this Appendix into their one-paragraph "Statement of Facts." The total length of these two documents is 90 pages, almost triple the page limit set by this Court.

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[2](...continued)
venom with which they attack their former religion. The declarations found in defendants' Exhibits in Support of Replies to Motions for Summary Judgment on First Amendment and Statute of Limitations grounds provide the truth of these matters, supported by photographs and videotapes of the people and places claimed. The Court is urged to review these declarations and their exhibits carefully, if only to discover for itself that the "camp in the desert," was a pleasant ranch located in the heart of agricultural country, surrounded by green hills and eucalyptus trees. [Ex. A, Declaration of Mark Rathbun, Ex. 1 - 3].

Local Rule 3.10.1 specifically states that "[a]ppendices shall not include any matters which properly belong in the body of the memorandum of points and authorities or pre-trial or post-trial brief" (emphasis added). It is beyond dispute that a Statement of Facts belongs in a memorandum or brief, not in a separate unsworn appendix. Obviously, the only reason plaintiffs filed this separate appendix is to attempt to get around Local Rule 3.10 and this Court's August 9 Order.

Because of this clear violation of this Court's order and of Local Rules 3.10, 3.10.1, this Court should strike and refuse to consider plaintiffs' 53-page Appendix.[3]

Plaintiffs' opposition papers also fail to contain a Separate Statement of Genuine Issues, as required by Rule 7.14.2 of the Local Rules of this Court.[4] When the party opposing summary judgment fails to include such a statement, the facts of the movant set forth in the Statement of Uncontroverted Facts are deemed admitted:

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[3] If the Court does review the plaintiffs' Appendix, the Court should note that the plaintiffs repeatedly acknowledge that they were fully aware of their alleged injuries as early as 1974, and that they remained fully cognizant of their alleged injuries as they allegedly occurred throughout their tenure with the Church. Furthermore, the declarations filed herewith carefully show how many of the allegations contradict the Aznarans' own sworn testimony.

[4] Late on Friday, August 23, 1991, when this memorandum was finished except for preparation of indices, defendants did receive a document by telecopier which was captioned an Ex Parte Application to File Statements of Genuine Issues, though defendants have not been served. As defendants had already completed their reply in the absence of any Statement of Genuine Issues, and as the Statement has not been accepted for filing nor served, this Memorandum does not address the eleventh-hour Statement and responds only to those documents timely filed with the Court in opposition to the present motion.

> In determining any motion for summary judgment, the Court <u>will</u> assume that the material facts as claimed and adequately supported by the moving party are admitted to exist without controversy except to the extent that such material facts are (a) included in the "Statement of Genuine Issues" and (b) controverted by declaration of other written evidence filed in opposition to the motion.

Rule 7.14.3, Local Rules of the United States District Court for the Central District of California (emphasis added).

The courts have been firm in requiring strict compliance with Local Rule 7.14.3 and its counterparts in other courts. In <u>Nilsson, Robbins, Dalgarn, Berliner, Carson & Wurst v. Louisiana Hydrolec</u>, 854 F.2d 1538 (9th Cir. 1988), the Ninth Circuit affirmed the district court's grant of summary judgment where the movant adequately supported its motion with declarations and deposition excerpts, and the opposing party did not support the opposition with specific facts. The court held that Local Rule 7.14.3 "serves as adequate notice to non-moving parties that if a genuine issue exists for trial, <u>they must identify that issue</u> and support it with evidentiary materials, without the assistance of the district court judge." 854 F.2d at 1545 (emphasis added). <u>Nilsson</u> makes clear that submission of a Statement of Genuine Issues is mandatory: it is not the trial judge's burden to sift through lengthy deposition testimony, memoranda, or other documents to determine what facts the plaintiffs believes are in dispute. Rather, the party opposing summary judgment <u>must</u> submit "a concise 'Statement of Genuine Issues' as to which it contends

that there exists a genuine issue necessary to be litigated." Laidman v. Tivoli Industries, Inc., No. CV 89-4505-DWW, 1990 U.S. Dist. Lexis 18477 (C.D. Cal. July 17, 1990); see also Von Milbacher v. Teachers Insurance and Annuity Ass'n., Civ. No. 88-1033, 1988 U.S. Dist. Lexis 11742 (D.N.J. Oct. 28, 1988) (holding that a separate factual statement similar to a factual summary in a brief fails to meet the requirement of a concise separate statement of fact).

Where, as here, the movants have met their burden of showing entitlement to summary judgment, and the non-movant has not presented opposing facts in the required form, summary judgment must be granted. This was the outcome in Nilsson and Laidman under Local Rule 7.14.3, as well as in many cases in other courts with similar local rules. See, e.g., Cawley v. City of Port Jervis, 753 F.Supp. 128 (S.D.N.Y. 1990); Knowles v. Postmaster General, 656 F.Supp. 593 (D.Conn. 1987); Alvarado-Morales v. Digital Equipment Corp., 669 F.Supp. 1173 (D.P.R. 1987), aff'd 843 F.2d 613 (1st Cir. 1988); Furst v. New York City Transit Authority, 631 F.Supp. 1331 (E.D.N.Y. 1986).

II. PLAINTIFFS' CLAIMS ARE BARRED BY THE STATUTE OF LIMITATIONS

A. The Claim For False Imprisonment Must Be Dismissed

Setting aside the Aznarans' proclivity for self-contradiction and their consuming devotion to smearing defendants rather than responding to defendants' factual showing and arguments, the most notable feature of the Aznarans' opposition regarding the false imprisonment claim is their complete failure to refute defendants' showing that the claim, based on Ms. Aznaran's tenure on the RPF from March 3 to March 31, 1987, is

barred by the one-year statute of limitations. First, plaintiffs explicitly concede the only relevant fact -- Ms. Aznaran left the RPF on March 31, 1987, over one year before this lawsuit was filed. Plaintiffs' Opposition at 16 (hereinafter "Pl. Opp."); see Defendants' Memorandum at 9-13 (hereinafter "Def. Mem."); Defendants' Uncontroverted Fact No. 4.[5] Second, they make no legal argument that Ms. Aznaran's claim based on the RPF, standing alone, falls within the limitations period. Thus, the false imprisonment claim based on the RPF must be dismissed.

Instead, plaintiffs assert for the first time in this case, less than two months before trial, that Ms. Aznaran's false imprisonment claim is based on nine days that she and her husband spent in a publicly accessible Best Western Hotel in Hemet, California, during which time she and her husband drove to Los Angeles in their own truck, went shopping, walked around town, ate at public restaurants, went to a public laundromat, engaged in sexual activities with each other, and had a telephone in their private motel room. [V.A. Dep. at 809-21, 905; R.A. Dep. II at 68-74; Def. Ex G (Exs. 11-15)]. This belated claim must not be considered by this Court and is frivolous as a matter of law.

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[5] Plaintiffs attempt to distract this Court from the obvious fact that they missed the statutory deadline for filing their lawsuit by focusing on irrelevant allegations concerning the RPF prior to April 1, which in any event, are directly contradicted by Ms. Aznaran's own testimony. Indeed, the Aznarans and their counsel are so busy changing their stories that they directly contradict each other: Ms. Aznaran states that on March 31, 1987, when Jesse Prince and David Bush "returned [in a rental car,] I ran down the hill with my guard, Chris Byrnes, chasing me." V.A. Dec., Aug. 16, 1991, ¶ 4 (emphasis added). By contrast, her attorney states: "Jesse came back to Happy Valley in a car, picked up Vicki, who was still laying under the tree and left. V.A. Dep. at 734, 740-41." [Pl. Opp. at 13] (emphasis added).

As plaintiffs explicitly concede, "the imprisonment at Hemet was not expressly pleaded," in their complaint. Pl. Opp. at 16 n.3; see Complaint, ¶ 30 (false imprisonment allegation explicitly limited to Ms. Aznaran's tenure at Happy Valley). This Court permitted the plaintiffs until August 18, 1989 to file an amended complaint, long after much discovery was completed, including production of documentary evidence proving that Ms. Aznaran had left the RPF on March 31, 1987. See Def. Exhibit D [Ex. 40 to V.A. Dep.]; Def. Exhibit G. Plaintiffs chose not to amend their complaint, and therefore never alleged that the period in the motel in Hemet constituted false imprisonment. Based on the absence of any such allegation, the Aznarans must be precluded from raising this claim for the first time now.

The Aznarans further argue that they should be entitled to rely on their allegations in the July 7, 1989 Joint Status Conference Report of Counsel. Pl. Opp. at 16 n.3. Defendants agree. In that Report, plaintiffs stated the false imprisonment claim in its entirety as follows:

> As part of defendants' program of coercive persuasion, and as an additional technique thereof, plaintiff Vicki Aznaran was falsely imprisoned in something called the Rehabilitation Project Force wherein she was constantly guarded, compelled to eat substandard food, to run around a telephone pole literally for days on end, locked up at night and was subjected to hours of indoctrination daily.

Status Report, at 5-6 (emphasis added). As the Court can see, there is not even a hint that the false imprisonment claim

includes the Aznarans' stay at the Best Western Motel.

Moreover, even if it were not time-barred, a false imprisonment claim based on the Aznaran's alleged experiences in the RPF would not be justiciable. See, Motion for Summary Judgment Pursuant to First Amendment, pp. 14-25; 32-34. The RPF is based solely on the writings of L. Ron Hubbard, and is considered by the members of the Scientology religious order to whom those writings apply to be a mandatory and essential element of their religious beliefs and practice. [Flinn Dec., Exhibit to First Amendment Motion, ¶ 24; Ex. G, Declaration of Lynn R. Farny; Ex. H, Declaration of Jesse Prince; Ex. I, Declaration of David Bush]. The appropriateness of a hierarchical church's non-violent disciplinary actions taken against a member has consistently been held to be beyond the cognizance of civil courts. Indeed, the courts have been particularly deferential when questions of church discipline are at issue. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696, 717 (1976) ("questions of church discipline and the composition of the church hierarchy are at the core of ecclesiastical concern"); Higgins v. Maher, 210 Cal.App.3d 1168, 1170, 258 Cal.Rptr. 757, 757-58 (1989) (holding disciplinary actions against a Roman Catholic priest, including removal from his position, incarceration in a psychiatric hospital, and treatment which included psychiatric drugs and electroshock, were nonjusticiable.)

Plaintiffs also rely on the "deposition and discovery procedure" as a basis for their newly invented claim. Pl. Opp. at 16 n.3. Yet this Court could painstakingly scrutinize every

word in the record without finding a single hint that plaintiffs intended to assert this claim. Certainly defendants could not have been expected to conclude on their own that the Aznarans would conceivably assert that a stay at a public motel during which time the Aznarans moved about freely, travelled to Los Angeles and to other public facilities and enjoyed the use of a private room with a telephone, constituted false imprisonment.

The obvious truth is that when plaintiffs and their counsel finally realized that the indisputable documentary evidence proved that Ms. Aznaran left the RPF on March 31, and that her false imprisonment claim was dispositively barred by the statute of limitations, they simply invented a new claim and created new "facts" to support it. This Court must not countenance such abuse of the integrity of its processes by permitting a brand new claim based wholly on self-contradicted facts to be asserted only a few weeks before trial.

In any event, the claim of false imprisonment based on the period from March 31 to April 9, 1987 is completely meritless as a matter of law. Defendants submit that no court in the history of this country has held that a nine-day stay in a publicly accessible motel, with a telephone used to make numerous long-distance calls, including to Ms. Aznaran's sister, and which period included a drive in their own pick-up truck to Los Angeles, eating out in public restaurants, taking walks on the public streets, shopping in stores open to the general public, and going to a public laundromat, constitutes false imprisonment.

It is undisputed that the Aznarans had substantial periods of time alone in their motel room and that they walked around

town and went to stores and restaurants by themselves. See V.A. Dep. at 817-21.[6] Indeed, the Aznarans frequently left their hotel room, and were late for several appointments with Mr. Rathbun during this time period, saying that they had been out to restaurants, or out shopping. [Ex. B, Declaration of Mark Rathbun.] Once they drove their truck to Los Angeles, breaking a meeting with Mr. Rathbun completely. Id. No one prevented the Aznarans from using the telephone in their room to call the police, the FBI, the media, the motel manager, their Congressman or other local, state or federal officials. No one prevented the Aznarans when they were in Los Angeles from going to the police or the FBI. No one prevented the Aznarans from driving their truck to the Hemet Police Station, blocks from their motel.

The Aznarans' allegation that they feared unspecified consequences in the future if they left the motel in Hemet does not constitute false imprisonment as a matter of law, and plaintiffs have not cited a single case that even suggests the contrary. As plaintiffs concede, the tort of false imprisonment requires the "nonconsensual, intentional confinement of a person, without lawful privilege, for an appreciable length of time, however short." Molko v. Holy Spirit Association, 46 Cal.3d 1092, 1123, 252 Cal.Rptr. 122, 139 (1988) (emphasis added), cert. denied, 490 U.S. 1084 (1989) (internal quotations and citations omitted); see Pl. Opp. at 6. The confinement must be complete, and if there is a known reasonable means of escape, there can be

[6] Ms. Aznaran's testimony is a far cry from her counsel's shrill and false assertions that the Aznarans were guarded 24 hours a day and were ordered to stay in the motel unless they received permission to leave. Pl. Opp. at 11, 15-16.

no false imprisonment. See Restatement of Torts (Second), section 36, at 54-55 (1965) (hereinafter "Rest."). Because the Aznarans could have walked away, driven away, or called the police, the claim that they were confined is frivolous.

This case is virtually indistinguishable from Snyder v. Evangelical Orthodox Church, 216 Cal.App.3d 297, 264 Cal.Rptr. 640 (1989). In Snyder, one plaintiff, Roberson, a Bishop of the Church, confessed to his superior that he was having an extramarital affair with Snyder. The superior ordered Roberson to spend a week in a motel without outside contact, including his family, or his adulterous relationship would be exposed. The court rejected his claim of false imprisonment based on his submission to the threats and "blackmail" to reveal his confidences, where Roberson spoke to Snyder and his daughter; "went on a drive with both women; left the motel and took a walk; was visited in the motel by Snyder; [and] went out to dinner with Snyder ..." Id. at 304, 264 Cal.Rptr. at 643. Just as there was no false imprisonment in the motel in Snyder, there was none at the Hemet Best Western Motel that served as home base for even broader freedom of movement and activity for the Aznarans.

The Aznarans are correct that there can be false imprisonment through severe duress, but they persist in ignoring the fact that there still must be complete confinement. See Rest., section 40A, at 61. Thus, even assuming the Aznarans were subjected to duress during their stay at the Best Western Motel, it is uncontroverted that they were not completely confined.

Each case cited by plaintiffs for the proposition that duress or fear of threats may constitute false imprisonment

involved extraordinarily threatening consequences and extreme confinement. See People v. Riddle, 189 Cal.App.3d 222, 228, 234 Cal.Rptr. 369, 373 (1987) (defendant pointed gun at mother and ordered both parents out of the trailer, i.e., to go where they did not wish to go; People v. Martinez, 150 Cal.App.3d 579, 586, 198 Cal.Rptr. 565, 569 (1984) (victim repeatedly raped by defendant, who threatened her with screwdriver and threatened to shoot her husband if she resisted); Parnell v. Superior Court, Alameda County, 119 Cal.App.3d 392, 409, 173 Cal.Rptr. 906, 916 (1981) (abduction of seven-year-old boy, held by defendant for eight years, and subjected to repeated acts of sodomy); Shanafelt v. Seaboard Finance Co., 108 Cal.App.2d 420, 422-23, 239 P.2d 42 (1951) (defendant blocks pregnant woman's only means of escape; orders her to stay in the house until her furniture is seized).[7] Plaintiffs' reliance on these cases to assert false imprisonment in a Best Western Motel demonstrates the desperate and frivolous nature of their claim.

Plaintiffs' assertions that there can be false imprisonment by a private party within the confines of the area from Hemet to Los Angeles is likewise frivolous. The sources upon which plaintiffs rely referred exclusively to improper use of legal process by government officials to restrain an individual within a precise geographic area. See Rest., section 36, at 56 (comment

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[7] The ancient case of Fotheringham v. Adams Express Co., 36 F. 252 (E.D.Mo. 1888), is wholly irrelevant to the facts here. In Fotheringham, the plaintiff had no means of escape, as he was "at all times subject to the control and direction" of defendant's agents, and force was threatened against him if he attempted to leave. This is a far cry from the Aznarans' sojourn at the Best Western Motel.

b); Prosser and Keaton On Torts section 11 (5th ed. 1984); Allen v. Fromme, 141 App.Div. 362, 126 N.Y.S. 520 (1910) (sole case relied upon by Prosser; plaintiff released from prison upon posting bond that confined him to "jail limits").

As plaintiffs concede that Ms. Aznaran voluntarily left the RPF on March 31, 1987, and because she was not falsely imprisoned after that time, or ever, the continuing tort doctrine or "conspiracy" doctrines, upon which plaintiffs so heavily rely, Pl. Opp. 16-21, is irrelevant and the claim must be dismissed.

B. The Claims for Intentional and Negligent[8] Infliction of Emotional Distress Must Be Dismissed[9]

In Plaintiffs' Memorandum in Opposition to Motion for Summary Judgment, dated Dec. 7, 1990, at 54-57 (hereinafter "Pl. Dec. 7 Mem."), the Aznarans alleged several specific acts causing them emotional distress, in addition to their claim of

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[8] Plaintiffs assert that their claim for negligent infliction of emotional distress is based "on the principles set forth in Molko and in Wollersheim v. Scientology." Pl. Opp. at 22. Molko did not contain a claim for negligent infliction of emotional distress, see Molko, supra, 46 Cal.3d at 1101, 252 Cal.Rptr. at 125, and the court in Wollersheim rejected plaintiff's claim for negligent infliction of emotional distress. Wollersheim, 212 Cal.App.3d 872, 900, 260 Cal.Rptr. 331, 349 pet. for cert. granted, vacated and remanded on other grounds, ___ U.S. ___, 111 S.Ct. 1298 (1991). Plaintiffs' express reliance on Wollersheim mandates dismissal of the negligence claim. See also Nally v. Grace Community Church, 47 Cal.3d 278, 253 Cal.Rptr. 97 (1988) cert. denied, 490 U.S. 1007 (1989).

[9] Defendants do not understand what plaintiffs mean in asserting that this Court has already determined the legal sufficiency of their second through eleventh causes of action. Pl. Opp. at 21-22. Obviously, this Court has not addressed the statute of limitations issues, which defendants expressly reserved in their summary judgment motion dated October 22, 1990. Any suggestion that the Court has already ruled on the limitations issues is simply false.

"brainwashing."[10] In this motion, defendants demonstrated that each of the alleged specific acts set forth in plaintiffs' prior memorandum occurred before April 1, 1987, and were barred by the statute of limitations, because the Aznarans themselves had explicitly testified that they experienced and were aware of the alleged emotional distress at the time. Def. Mem. at 16-19; Uncontroverted Fact Nos. 5-7. In their opposition, plaintiffs have not even attempted to refute defendants' showing that each of the specific acts set forth in their prior opposition papers is barred by the statute of limitations. Thus, any emotional distress claim based on these specific acts must be dismissed.

Plaintiffs now appear to rely exclusively on their claim based on "unwitting[] expos[ure] to coercive persuasion." Pl. Opp. at 24; see Joint Status Report, at 5.[11] As set forth in Def. Mem. at 16-19, this claim is barred by the two-year Texas statute of limitations for personal injury. Tex. Civ. Code Ann. section 16.003(a) (Vernon 1986). Plaintiffs are simply wrong that California law applies to this claim, which arose in Texas in or about 1972. See Pl. Opp. at 22-23 n.9. Thus, plaintiffs' reliance on California tolling theories are simply irrelevant.

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[10] Plaintiffs' "coercive persuasion" or "brainwashing" theory is barred by both the First Amendment and standards for admissibility of purportedly scientific evidence. See Defendants' Motion for Summary Judgment, Pursuant to the First Amendment, dated July 11, 1991, at 27-32, and Defendants' Motion to Exclude the Testimony of Plaintiffs' Designated Expert, dated July 29, 1991.

[11] To the extent plaintiffs are claiming that the alleged acts set forth in Pl. Opp. at 29-30, occurring after March 31, 1987, are themselves actionable, as opposed to being part of the alleged coercive persuasion, this Court must not consider such claims, as they form no part of the Complaint, the Status Report, or plaintiffs' prior submissions concerning their emotional distress claims.

First, when a claim arises in another state, "in determining the time when a cause of action arose and the statute of limitations began to run, the courts will apply the law of the state in which the cause arose." 12 Cal.Jur.3d, Conflict of Laws section 101, at 604 (1974) (emphasis added); see State of Ohio v. Porter, 21 Cal.2d 45, 51-52, 129 P.2d 691 (1942), cert. denied, 318 U.S. 757 (1943).

Second, when a suit is brought in California for a cause of action arising in another state, and the claim would be barred in that state, California "borrows" the statute of limitations of that state and bars the claim in the courts of California. See Cal. Code Civ. Proc. section 361.[12] Only "[w]here the cause of action was held by a citizen of this state from the time it accrued," would the borrowing statute not apply. 3 B. Witkin, California Procedure, section 71, at 99 (3d ed. 1985); see Biewend v. Biewend, 17 Cal.2d 108, 115, 109 P.2d 701 (1941) ("since the plaintiff has not been a citizen of this state from the time the cause of action accrued, [section 361] has the effect of applying the Missouri statute of limitations to those [claims] accruing" in Missouri) (emphasis added); 12 Cal.Jur.3d, Conflicts of Law section 103 at 606-07 (exception to section 361 applies only when plaintiff "has held the cause, as a California

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[12] California Code of Civil Procedure section 361 states in full:

> When a cause of action has arisen in another state, or in a foreign country, and by the laws thereof an action thereon cannot there be maintained against a person by reason of the lapse of time, an action thereon shall not be maintained against him in this state, except in favor of one who has been a citizen of this state, and who has held the cause of action from the time it accrued.

citizen, from the time it accrued") (emphasis added); Stewart v. Spaulding, 72 Cal. 264, 266, 13 P. 661 (1887). The Aznarans were not citizens of California until 1981, nine years after their emotional distress cause of action accrued, nor were they California citizens in April 1988 when this suit was commenced. Thus, because plaintiffs do not even attempt to dispute that the Aznarans' emotional distress claim based on "coercive persuasion" would be barred if brought in Texas, see Def. Mem. at 17-18, section 361 applies to bar the claim in California.

Moreover, even if California limitations law applied to this claim, plaintiffs do not even attempt to dispute that defendants' alleged practices were allegedly causing them emotional distress as early as 1974, and that they were acutely aware of this distress at that time as well as throughout their tenure with the Church. Def. Mem. at 16-19; Uncontroverted Fact Nos. 5-7; Declaration of Vicki Aznaran, dated Aug. 16, 1991, ¶ 13(E); Declaration of Richard Aznaran, dated Aug. 16, 1991, ¶ 4. Thus, plaintiffs' reliance on "delayed discovery" or "fraudulent concealment" is to no avail.

The Aznarans are simply wrong, and can cite no authority for their assertion that their claims accrued only when "the Aznarans discovered that they had been brainwashed and unduly influenced by defendants." Pl. Opp. at 23. Rather, the law is clear that the claim accrued no later than when the Aznarans were aware that they allegedly suffered severe emotional distress, not when they came up with a legal label -- "brainwashing" -- for the emotional distress they concededly were aware they were allegedly suffering. Thus, the California Supreme Court has held:

the uniform California rule is that a limitations period dependent on discovery of the cause of action begins to run no later than the time the plaintiff learns, or should have learned, the facts essential to his claim. It is irrelevant that the plaintiff is ignorant of his legal remedy or the legal theories underlying his cause of action. Thus, if one has suffered appreciable harm and knows or suspects [the] cause, the fact that an attorney has not yet advised him does not postpone commencement of the limitations period.

Gutierrez v. Mofid, 39 Cal.3d 892, 897-98, 218 Cal.Rptr. 313, 316 (1985) (citations omitted, emphasis original and added); see McGee v. Weinberg, 97 Cal.App.3d 798, 802, 159 Cal.Rptr. 86, 89 (1979) ("Knowledge of facts is what is critical, not knowledge of legal theories.") (emphasis added).

Plaintiffs' "fraudulent concealment" tolling theory is wholly untenable as applied both to the emotional distress claims and to every other claim of the Aznarans. A fraud claim (or any claim based on fraudulent concealment) runs from the time when a plaintiff, "tested by an objective standard," "discovers the facts constituting the violation or in the exercise of reasonable diligence should have discovered them." Meadows v. Bicrodyne Corp., 785 F.2d 670, 672 (9th Cir. 1986) (citations omitted); Gutierrez, supra, 39 Cal.3d 896-99, 218 Cal.Rptr. at 315-16. Moreover, "[i]f a plaintiff has inquiry notice, he must prove that he could not have reasonably discovered the facts constituting the alleged fraud." David K. Lindemuth Co. v.

Shannon Financial Corp., 660 F.Supp. 261, 264 (N.D.Cal. 1987); Miller v. Bechtel Corp., 33 Cal.3d 868, 191 Cal.Rptr. 619, 623-24 (1983); Def. Mem. at 25-27. Defendants have shown in explicit detail that, as a matter of uncontroverted fact, plaintiffs should have been and in fact were well aware of any alleged frauds no later than 1984, and that they were on reasonable inquiry notice of any alleged frauds, which could readily have been discovered by plaintiffs, well over three years before they commenced this lawsuit. See Def. Mem. 27-38; Separate Statement of Uncontroverted Facts, Fact Nos. 10-16.

Thus, because the Aznarans concededly were aware well before April 1, 1987, that the alleged acts of defendants were allegedly causing them emotional distress, and because all the acts that plaintiffs have testified or previously asserted caused them emotional distress accrued before April 1, 1987, the claims for negligent and intentional infliction of emotional distress must be dismissed as untimely.

C. The Claim for Loss of Consortium Must Be Dismissed

Plaintiffs do not contest the facts set forth by defendants, Pl. Opp. at 36-37, which demonstrate that plaintiffs' alleged loss of consortium ended no later than March 31, 1987, more than one year prior to the filing of this lawsuit, that plaintiffs were aware they were experiencing a loss of consortium at the time, and that they were aware the alleged harm was caused by defendants' alleged conduct. See Def. Mem. at 21-24; Uncontroverted Fact Nos. 7-9. This Court must accept this undisputed evidence and dismiss this claim.

Plaintiffs' only excuse for their late filing of this claim

is that "the injuries caused to plaintiffs' marriage in consequence of defendants' imposition of coercive persuasion without plaintiffs' knowledge or consent were not necessarily immediately attributable to defendants' misconduct." Pl. Opp. at ¶ 37 (emphasis added). Not only is this the first time plaintiffs have ever made this vague assertion, but the mere statement that the inquiries "were not necessarily" attributable to defendants does not constitute the "specific facts showing that there is a genuine issue for trial" that the non-moving party "must set forth" to defend against a motion for summary judgment. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986) (emphasis added).

Here, of course, the undisputed evidence shows that, whether or not plaintiffs "necessarily" would be aware of the cause of their alleged claim, plaintiffs were in fact aware of their alleged loss of consortium at the time, and that they did in fact know it was attributable to defendants' alleged conduct. Thus, Ms. Aznaran testified that she asked Mr. Aznaran for a divorce in 1974, as a result of statements by Dean Stokes that Mr. Aznaran was a "suppressive person," which Ms. Aznaran ultimately accepted as true. V.A. Dep. at 862-63. Under the Texas two-year statute of limitations, which applies pursuant to the California borrowing statute, Civ. Proc. Code § 361, the 1974 divorce claim is untimely. Def. Mem. at 21.

As to the claim based on purported brief periods of separation in 1986 until March 31, 1987, Ms. Aznaran testified that she specifically requested of her superiors in the fall or winter of 1986 that she "wanted to work something out so that I

could be with Richard, we had been apart too long." V.A. Dep. at 1218; Def. Mem. at 23; Uncontroverted Fact No. 8. The Aznarans also assert that they were aware that they were separated as a result of defendants' alleged conduct while Ms. Aznaran was on the RPF from March 3 to March 31, 1987. Pl. Opp. at 12; R.A. Dec., Aug. 16, 1991, ¶ 4."

Even if the delayed discovery rule applied to a claim of loss of consortium, the statute runs not from the time a plaintiff determines her legal theory, but from when "he has notice or information of circumstances to put a reasonable person on inquiry, or has the opportunity to obtain knowledge from sources open to his investigation." Gutierrez, supra, 39 Cal.3d at 896-97, 218 Cal.Rptr. at 315 (internal quotations omitted).

As the Aznarans were indisputably aware of their purported injury and its cause before April 1, 1987, this claim must be dismissed. Priola v. Paulino, 72 Cal.App.3d 380, 140 Cal.Rptr. 186, 191-92 (1977); Uram v. Abex Corp., 217 Cal.App.3d 1425, 1438, 266 Cal.Rptr. 695, 703 (1990). That the Aznarans had not yet come up with the label of "brainwashing" to describe the cause of the injury, of which they were long aware, is, of course, legally irrelevant. See Gutierrez, supra, 39 Cal.3d at 897-98, 218 Cal.Rptr. at 316; McGee, supra, 97 Cal.App.3d at 803, 159 Cal.Rptr. at 89.

D. Plaintiffs' Remaining Causes of Action Must Be Dismissed

Plaintiffs do not controvert any of the facts or law set forth by defendants, which demonstrate that each of plaintiffs' six remaining causes of action -- fraud, constructive fraud, breach of contract, restitution, invasion of privacy, and

statutory California minimum wage claim -- are barred by the statute of limitations.[13] Instead, plaintiffs simply assert, without any explanation:

> Each of the tolling theories, discussed above, is applicable to the remaining causes of action and, under the facts of this case, are sufficient to raise triable issues as to the accrual of the statute of limitations of each of the remaining causes of action.

Pl.Opp. at 37.

As plaintiffs have failed to controvert any of defendants' Statement of Uncontroverted Facts, they must all be taken as true. See Local Rule 7.14.3. Because there is nothing in plaintiffs' opposition papers as to these six causes of action to which defendants can respond, defendants hereby rely on their prior memorandum and supporting papers, which demonstrate that each of these six claims are time-barred, as well as Point IIB, *supra*, which debunks plaintiffs' "fraudulent concealment" tolling theory, and Point III, *infra*, which demonstrates that plaintiffs' "conspiracy" tolling theory is meritless.

III. THE STATUTE OF LIMITATIONS IS NOT TOLLED BY CONSPIRACY

The Aznarans contend that the statute of limitations should

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[13] Defendants once again note that plaintiffs once again concede that there is no cause of action for civil conspiracy. Pl. Opp. at 17 n.7; see Joint Status Report at 8 n.1; *Baltimore Football Club, Inc. v. Superior Court*, 171 Cal.App.3d 352, 359 n.3, 215 Cal.Rptr. 323, 326 n.3 (1985); 5 B. Witkin, *Summary of California Law*, section 44 (9th ed. 1988); 12 *Cal.Jur.3d*, Civil Conspiracy section 4 at 179 (1974) ("Since there is no cause of action for conspiracy in and of itself, the statute of limitations is determined by the nature of the action in which the conspiracy is alleged or appears."). Thus, there is no basis for this Court's continued refusal to dismiss the plaintiffs' fifth cause of action alleging "Conspiracy."

be tolled because defendants' alleged acts were allegedly carried out pursuant to a civil conspiracy, citing Wyatt v. Union Mortgage Co., 24 Cal.3d 773, 157 Cal.Rptr. 392 (1979). Plaintiffs seriously misconstrue the scope of Wyatt, and on the undisputed facts of this case, Wyatt does not toll the statute of limitations for any of plaintiffs' claims that are otherwise barred by the statute of limitations.

A. There is No "Last Overt Act" Pursuant to a Conspiracy within the Limitations Period For Several of the Causes of Action

Assuming for the moment that the tolling doctrine of Wyatt applies to non-fraud actions, but see Point IIIB, infra, no overt acts even remotely relevant to several of the alleged torts are even alleged to have occurred within the limitations period. In the absence of an overt act in furtherance of a conspiracy to commit the alleged wrong, the limitations period is not tolled.

Ms. Aznaran's alleged false imprisonment at the RPF ended on March 31, 1987, outside the one-year limitations period, and the newly invented claim of false imprisonment after March 31, 1987, is meritless as a matter of law. See Point IIA, supra. Even assuming that there was a conspiracy to falsely imprison Ms. Aznaran at the RPF, there is no evidence of any overt act in furtherance of such false imprisonment conspiracy after she left on March 31. Of course, under Wyatt, "it is imperative for the plaintiff to allege when the last overt act took place." 24 Cal.3d at 789, 157 Cal.Rptr. at 401 (internal quotations omitted).

In addition, the "last overt act" must be in furtherance of a conspiracy to commit the alleged tort. In other words, a last

overt act in furtherance of a conspiracy to defraud cannot toll the statute of limitations for the unrelated claim of false imprisonment. See Wyatt, 24 Cal.3d at 788, 157 Cal.Rptr. at 401 (plaintiff must allege "at least some act pursuant to the conspiracy was still being performed . .. within the . . . limitations time period") (emphasis added); Maheu v. CBS, Inc., 201 Cal.App.3d 662, 674, 247 Cal.Rptr. 304, 310-11 (1988) (act that gives rise to a copyright claim is not in furtherance of a conspiracy to convert wrongfully the same property). Because there was no false imprisonment "conspiracy" after March 31, 1987, the claim is time-barred, even assuming Wyatt's relevance.

The identical argument applies to the loss of consortium claim. Any alleged loss of consortium ended no later than March 31, 1987, outside the limitations period. See Point IIC, supra; Def. Mem. at 19-25; Uncontroverted Fact Nos. 7-9. Plaintiffs allege no overt act in furtherance of a conspiracy to cause a loss of consortium after March 31, 1987, and Ms. Aznaran specifically testified that the plaintiffs experienced no such loss after March 31, 1987. V.A. Dep. at 746-50, 818-21. Therefore this claim is time-barred, even if Wyatt otherwise is applicable to this tort.

As to Ms. Aznaran's invasion of privacy claim, her testimony explicitly eliminates any issue of fact whether there was ever a conspiracy to invade her privacy, let alone an overt act in furtherance of such a conspiracy after March 31, 1987. Thus, Ms. Aznaran's testimony shows that the individual who allegedly invaded her privacy did so on his own, and against the wishes of the only two other individuals who were aware of his acts. V.A.

Dep. at 1260-62; Def. Mem. at 47-48; Fact No. 23.[14]

B. The Conspiracy Tolling Doctrine Does Not Apply to Torts

Both the specific holding of Wyatt and its rationale are limited to claims of economic fraud, and this federal court should be cautious in expanding this unusual doctrine, particularly given that the Ninth Circuit has explicitly repudiated Wyatt when federal law governs the time of accrual of a cause of action. See Gibson v. United States, 781 F.2d 1334, 1340 (9th Cir. 1986), cert. denied, 479 U.S. 1054 (1987); Compton v. Ide, 732 F.2d 1429, 1432-33 (9th Cir. 1984) ("Mere continuance of a conspiracy beyond the date when injury or damage occurs does not extend the statute of limitations. . . . It is the wrongful act, not the conspiracy, which is actionable in a civil case."). Defendants are unaware of any other jurisdiction that has adopted Wyatt's civil conspiracy theory, presumably because, as plaintiffs' position here amply illustrates, it virtually eliminates the statute of limitations as a bar to trial on long-stale claims.

In Wyatt, the plaintiffs alleged claims of fraud and constructive fraud in the obtaining of a mortgage loan. Wyatt focused on the nature of the fraud in that case as an ongoing

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14 The totally vague, unsubstantiated statements in plaintiffs' declarations that their invasion of privacy claim is based on the acts of one Kimberly Yager, V.A. Dec. ¶ 13(F); R.A. Dec. ¶ 12(E), must be ignored by this Court. This alleged incident has never been part of the Aznarans' claim for invasion of privacy in their complaint, status report, testimony, or any other papers filed in this matter. Again, the Aznarans have chosen to invent a new claim once they realize that the claim heretofore asserted is time-barred. In any event, nothing in the plaintiffs' papers demonstrates an invasion of privacy by Ms. Yager, let alone by defendants.

scheme that froze the plaintiffs in place absent judicial relief. 24 Cal.3d at 786, 788, 157 Cal.Rptr. at 400-01.

The Aznarans' attempt to apply Wyatt to any and all of their various tort, contract, and statutory claims goes far beyond any known construction of the Wyatt fraud tolling theory. The Wyatt doctrine has never been extended to claims for negligent or intentional infliction of emotional distress, breach of contract, restitution, loss of consortium, invasion of privacy, or a statutory minimum wage claim. The acts plaintiffs complained of here that allegedly resulted in such wrongs were in fact separate, distinct and completed acts, which gave rise to a cause of action at the time they allegedly occurred, and certainly no later than when plaintiffs became aware of the fact of their alleged injuries. See Gutierrez, 39 Cal.3d at 896-97, 218 Cal.Rptr. at 315. These distinct acts cannot be blithely equated with the type of unified, ongoing economic scheme to defraud a party, in which individual acts do not themselves support a claim for damages, but rather ultimately culminate in a fraud being perpetrated on the plaintiff and which holds the plaintiff in place, such as occurred in Wyatt.

Not only should this federal court not distort Wyatt to reach intentional tort, contract, and statutory claims, but it is inconceivable that the California courts would so stretch Wyatt to reach the long-stale allegations here, many of which accrued over fifteen years before suit was commenced and as to which the plaintiffs themselves cannot recall the relevant facts. In the interests of federalism and comity alone, this federal court should not be the first court to expand Wyatt so drastically.

C. Under the Circumstances Here, Wyatt Does Not Apply

The circumstances of the alleged fraud here, involving alleged misrepresentations by defendants that they would provide plaintiffs with spiritual and psychological services that would make them better persons, Complaint, ¶ 54, are so distinct from Wyatt as to make the civil conspiracy tolling theory inapplicable for several reasons.

First, the Aznarans' testimony makes clear that there could not have been a conspiracy to defraud them. Mr. Aznaran concedes that he made the same representations to others, including to Ms. Aznaran, that he now alleges were fraudulent, and that he believed them at the time. R.A. Dep.II at 635-41. He further testified that those who made the representations to him indicated that they too believed them, and that Mr. Aznaran believes that they too were "brainwashed". Id. at 642, 647-57. Similarly, Ms. Aznaran explicitly testified that the entire leadership of Scientology was "brainwashed" into accepting Scientology beliefs. V.A. Dep. at 1200-01. Mr. Aznaran said:

> You don't rise in power unless you are brainwashed. It's only people who are thoroughly and totally and completely brainwashed that are trusted with power.

R.A. Dep.II at 666. In such circumstances, where everyone believes in the statements alleged to be fraudulent, the Aznarans have failed to create a genuine issue of fact either of a fraud or of a conspiracy to defraud the plaintiffs.

Second, the plaintiffs have relied upon five types of representations as the exclusive basis for their fraud claims. See Pl. Dec. 7 Opp. at 38; see Def. Mem. at 35-37. These

representations were made to the Aznarans between 1971 and 1973 in Texas. Pl. Dec. 7 Opp. at 33-36; see also V.A. Dep. at 1236-50 (alleged representations made to her between 1972-77 in Texas were made "too long ago" for her to remember specifically what was represented to her). Because plaintiffs have relied exclusively on representations made to them in Texas, the Texas statute of limitations law applies, pursuant to California's borrowing statute. See Civ. Proc. Code . Like the Ninth Circuit, Texas follows the discovery-of-the-fraud accrual rule, Interfirst Bank-Houston v. Quintana Petroleum Corp., 699 S.W. 2d 864, 875 (Tex.App. 1985), not California's unique civil conspiracy tolling theory. Def. Mem. at 27. Thus, under Texas law, only those fraudulent acts that occurred within two years of discovery of the fraud are actionable. See Cathey v. First City Bank of Arkansas Pass, 758 S.W.2d 818, 822 (Tex.App. 1988) ("any act committed more than two years prior to the filing of this conspiracy action would be barred by limitations").

Even if the Aznarans continued to experience the alleged detriments of the alleged misrepresentations after they moved to California in 1981, eight to ten years after they were allegedly induced to join the Scientology religion, there is no legal basis for this federal court to engraft the California civil conspiracy tolling doctrine onto Texas law. Moreover, there is no "last overt act" of a conspiracy to defraud within the three-year limitations period, as Ms. Aznaran testified that the last fraudulent misrepresentation occurred in 1977. Thus, Ms. Aznaran's fraud claims resulting from representations in Texas are barred by the statute of limitations, and Wyatt is

irrelevant. That Ms. Aznaran is now willing to contradict her sworn testimony, and assert that she continued to rely on alleged misrepresentations (from people that she has testified believed the alleged representations themselves) simply demonstrates plaintiffs' willingness to rewrite the "evidence" to suit their monetary desires.

Even assuming that California law applies, that the representations were fraudulent, and that overt acts in furtherance of a conspiracy to defraud occurred within the limitations period, any reasonably prudent person would have discovered the true nature of the allegedly fraudulent representations by the early 1980's at the absolute latest. Def. Mem. at 25-38; Uncontroverted Fact Nos. 5-16. Once discovered, the Aznarans could simply have ended their association with the Church, as they ultimately chose to do in 1987. The Aznarans have simply produced no evidence that, at any time after they did or should have discovered the alleged frauds in the early 1980's, they could not have followed the procedures for leaving their staff positions that they ultimately followed in April 1987.

From the time a reasonable person would have discovered defendants' allegedly fraudulent conduct, <u>any</u> detriment the Aznarans experienced was, as a matter of fact and law, a voluntary decision to remain with the Church, and was not a result of any fraud by defendants that continued to hold the plaintiffs in place, as required by <u>Wyatt</u>. The Aznarans, of course, had no legal obligation to remain in the Church and were free to leave. Their own testimony clearly shows that they did in fact choose to leave the Church as members in good standing in

1987 and received a low-interest loan of $20,000 and letters of recommendation for future employment, which Ms. Aznaran stated were "good consequences" of leaving. V.A. Dep. at 1185.

This situation contrasts sharply with Wyatt. The key point in Wyatt is that even after the plaintiffs learned of the fraud, and even after they had hired attorneys, there was no way to get out of their legal and economic obligations to defendants prior to judicial action. Thus in Lewelling v. Farmers Ins. of Columbus, Inc., 879 F.2d 212 (6th Cir. 1989), the court, in applying California law, made clear that Wyatt is an unusual exception to the general rule that a fraud claim "begins to run when an individual becomes aware of fraudulent harm." Id. at 217. For the Wyatt exception to apply there must be "evidence . . . that sheer economic duress or overpowering influence rendered plaintiffs incapable of acting to protect their legal rights." Id. Nothing of the kind is present here. When the Aznarans decided to leave their staff positions but remain Scientologists in good standing, they did just that, without violating any legal or economic obligations. Wyatt, therefore, is wholly inapplicable.

IV. THE COURT SHOULD DISREGARD THE REMAINDER OF THE OPPOSITION

As detailed in the Preliminary Statement, supra, the real thrust of the Aznarans' Opposition is not the foregoing, ineffectual legal contentions, but rather the "just allege it" philosophy of Yanny's paralegal, Gerald Armstrong, Yanny's continuing involvement despite this Court's explicit order, and the willingness of the Aznarans and their counsel to say anything at any time to try to breathe life into their false and moribund

claims. Armstrong's "helping out" while the Opposition was concocted not only reveals the continuing taint of Yanny's involvement with this case, it establishes the guiding principle that resulted in an Opposition that avoids cogent analysis of pertinent law and fact and instead seeks to prejudice the Court to the point of overlooking the motion, the relevant matters, and the fact that the Aznarans have all but expressly conceded that all their claims are time-barred.

Armstrong's philosophy of litigation is that facts and the truth are irrelevant and that all that is required to prevail is to allege whatever needs to be alleged is spelled out in a videotape of Armstrong made in 1984 as part of a police-authorized private investigation of individuals, including Armstrong, who attempted to seize control of the Church. [Cooley Dec., ¶ 4] In that tape, in the context of a discussion of attempting to prove facts in a civil proceeding where evidence was unavailable, Armstrong (under the mistaken belief that he was speaking with an ally) stated what a civil litigant should do when faced with a lack of evidence:

> They can allege it. They can allege it. They don't even have -- they can allege it.
>
> * * *
>
> Fucking say the organization destroys the documents.
>
> * * *
>
> Where are the -- We don't have to prove a goddamn thing. We don't have to prove shit; we just have to allege it. . .

[Id. at ¶ 4.]

The Aznarans literally trip over their own sworn statements in employing Armstrong's view of what courts will accept from civil litigants. They and their counsel are hopeful that smearing and falsely accusing defendants of all manner of things will suffice to prejudice the Court against the defendants to such an extent that truth, fact, law, and evidence are subordinated to a barrage of false and irrelevant accusations. Defendants submit the Rathbun, Bush, Prince, Heller, Bowles and Farny Declarations to set the record straight and debunk the lies that plaintiffs have elected to allege. They do not create any issue of material fact; this motion, based upon statutes of limitation and essentially undisputed facts, is meritorious on its own pertinent facts. Those declarations simply show that the Aznarans, Yanny, Greene and Armstrong will say absolutely anything, no matter how false or heinous, when they are concerned.

They are concerned here, trapped between facts that unassailably set their supposed claims in the legally distant past and statutes that bar their claims forever.

CONCLUSION

For the reasons set forth herein, and in defendants' previous memorandum and papers filed therewith, this Court should grant the defendants' motion for summary judgment dismissing plaintiffs' entire complaint as barred by the applicable statutes of limitations.

Dated: August 26, 1991

Respectfully submitted,

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document described as REPLY IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT BASED ON THE STATUTE OF LIMITATIONS on interested parties in this action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail at Hollywood, California, addressed as follows:

Ford Greene
711 Sir Francis Drake Blvd.
San Anselmo, CA 94960-1949

If hand service is indicated on the above list, I caused the above-referenced paper to be served by hand.

Executed on August 26, 1991 at Hollywood, California.